

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ALABAMA

DELANEY DEVELOPMENT, INC. ,	*	
YESTER OAKS APARTMENTS, WINDSOR	*	CIVIL ACTION NO. 11-500
PLACE APARTMENTS, CABANA	*	
APARTMENTS, CHCKASAW SHOPPING	*	
CENTER, EXOTIC WINGS, BRACO COMPLEX,	*	JUDGE:
PATHWAYS APARTMENTS, SANDPIPER	*	
APARTMENTS, and YESTER OAKS	*	
SHOPPING CENTER	*	MAGISTRATE:
	*	
VERSUS	*	
	*	
LANDMARK AMERICAN INSURANCE	*	
COMPANY, MT. HAWLEY INSURANCE	*	
COMPANY, and ILLINOIS UNION INSURANCE	*	
COMPANY	*	

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**COMPLAINT FOR DAMAGES**

NOW INTO COURT, through undersigned counsel, comes plaintiffs, Delaney Development, Inc., Yester Oaks Apartments, Windsor Place Apartments, Cabana Apartments, Chickasaw Shopping Center, Exotic Wings, Braco Complex, Pathways Apartments, Sandpiper Apartments and Yester Oaks Shopping Center, who respectfully represent as follows in this Complaint for Damages:

I.

Made plaintiffs herein are:

**DELANEY DEVELOPMENT, INC.**, a corporation organized under the laws of Alabama and with its principal place of business in Alabama;

**YESTER OAKS APARTMENTS**, a corporation organized under the laws of Alabama and with its principal place of business in Alabama;

**WINDSOR PLACE APARTMENTS**, a corporation organized under the laws of Alabama and with its principal place of business in Alabama;

**CABANA APARTMENTS**, a corporation organized under the laws of Alabama and with its principal place of business in Alabama;

**CHICKASAW SHOPPING CENTER**, a corporation organized under the laws of Alabama and with its principal place of business in Alabama;

**EXOTIC WINGS**, a corporation organized under the laws of Alabama and with its principal place of business in Alabama;

**BRACO COMPLEX**, a corporation organized under the laws of Alabama and with its principal place of business in Alabama;

**PATHWAYS APARTMENTS**, a corporation organized under the laws of Alabama and with its principal place of business in Alabama;

**SANDPIPER APARTMENTS**, a corporation organized under the laws of Alabama and with its principal place of business in Alabama; and

**YESTER OAKS SHOPPING CENTER**, a corporation organized under the laws of Alabama and with its principal place of business in Alabama.

II.

Made defendants herein are:

**LANDMARK AMERICAN INSURANCE COMPANY**, an insurance company authorized to do and doing business within Alabama and within the jurisdiction of this Honorable Court;

**MT. HAWLEY INSURANCE COMPANY**, an insurance company authorized to do and doing business within Alabama and within the jurisdiction of this Honorable Court; and

**ILLINOIS UNION INSURANCE COMPANY**, an insurance company authorized to do and doing business within Alabama and within the jurisdiction of this Honorable Court.

III.

Jurisdiction herein is invoked pursuant to 28 U.S.C. §1332 as the parties' citizenships are completely diverse and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

IV.

Venue is proper under 28 U.S.C. §1391(a)(2) because a substantial part of the events giving rise to this claim occurred in Mobile, Alabama within the Southern District of Alabama.

V.

Defendants are justly and truly indebted to Plaintiffs herein for damages, together with legal interest thereon from the date of judicial demand until paid, and for costs in these proceedings, for the following, to-wit:

VI.

Plaintiff, Delaney Development, Inc. owns commercial properties located in Mobile, Alabama, namely, Yester Oaks Apartments, Windsor Place Apartments, Cabana Apartments, Chickasaw Shopping Center, Exotic Wings, Braco Complex, Pathways Apartments, Sandpiper Apartments and Yester Oaks Shopping Center.

VII.

Plaintiffs contracted with Landmark American Insurance Company (hereinafter "Landmark"), Mt. Hawley Insurance Company (hereinafter "Mt. Hawley") and Illinois Union Insurance Company (hereinafter "Illinois") to insure its commercial properties. The Landmark policy bears policy number LHD 340443. The Mt. Hawley policy bears policy number MWH 0010082. The Illinois policy bears policy number D35885766-002.

VIII.

In the days preceding Hurricane Katrina's landfall on August 29, 2005, weather forecasters and government officials predicted that Hurricane Katrina, which was then in the Gulf of Mexico, would severely impact southern Alabama.

IX.

In anticipation of the impending storm, government officials ordered a voluntary evacuation of the greater Mobile area in and around southern Alabama. The voluntary evacuation order applied to everyone, including the plaintiffs. The voluntary evacuation order forced everyone to remain away from the affected area until official notice to return was provided.

X.

On August 29, 2005, Hurricane Katrina made landfall in the greater southern Alabama area. This windstorm severely damaged Plaintiffs' commercial properties. Plaintiffs mitigated its damages at all relevant times, performing necessary repairs in an attempt to swiftly reopen its commercial properties.

XI.

Plaintiffs timely notified Landmark, Mt. Hawley and Illinois of its loss after Hurricane Katrina caused damage to Plaintiffs' properties.

XII.

As of the date of the filing of this Complaint, Landmark, Mt. Hawley and Illinois have not tendered Delaney Development, Inc. a sufficient amount to adequately compensate Plaintiffs for its losses from Hurricane Katrina.

XIII.

At all times pertinent hereto, Landmark, Mt. Hawley and Illinois provided insurance coverage for the matters, risks, and things involved herein.

XIV.

Plaintiffs' commercial insurance policies issued by Landmark, Mt. Hawley and Illinois provide coverage for loss or damage caused by the peril of wind.

XV.

Despite having been provided with "satisfactory proof of loss," and despite conducting its own thorough investigation of the damages Plaintiffs incurred from Hurricane Katrina, Landmark, Mt. Hawley and Illinois have not adequately paid for any or all of the damage sustained to Plaintiffs' properties caused by this covered loss.

XVI.

Landmark, Mt. Hawley and Illinois are liable unto Plaintiffs under the following legal theories:

- a. Breach of contract;
- b. Breach of duty of good faith and fair dealing; and
- c. Any and all other legal theories which may be found through discovery and proven at trial in this matter.

XVII.

As a result of Landmark, Mt. Hawley and Illinois' actions, Plaintiffs have suffered the following nonexclusive list of damages:

- a. Loss of use of insured property;
- b. Loss of enjoyment of insured property;

- c. Loss of business income;
- d. Loss of movable goods;
- e. Diminution in value of the property;
- f. Permanent repair and remediation expenses;
- g. Temporary repair and remediation expenses;
- h. Attorney's fees;
- i. Costs of this litigation; and
- j. All other losses that will be proven at the trial of this matter.

XVIII.

Plaintiffs reserve the right to supplement and amend this Complaint for Damages.

XIX.

Plaintiffs pray for trial by jury.

**WHEREFORE**, plaintiffs herein, Delaney Development, Inc., Yester Oaks Apartments, Windsor Place Apartments, Cabana Apartments, Chickasaw Shopping Center, Exotic Wings, Braco Complex, Pathways Apartments, Sandpiper Apartments and Yester Oaks Shopping Center pray that the defendants, Landmark American Insurance Company, Mt. Hawley Insurance Company and Illinois Union Insurance Company be served with a copy of this Complaint and be duly cited to appear and answer the same, and that after expiration of all legal delays and due proceedings, there be judgment rendered in favor of Plaintiffs and against Defendants, in an amount that will fully compensate Plaintiffs for its damages pursuant to the evidence and in accordance with the law; all sums with legal interest thereon from the date of judicial demand until fully paid, for all costs of these proceedings, and for all general and equitable relief.

Respectfully submitted,

/s/C. Bennett Long

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**PLEASE HOLD SERVICE**